PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T MOBILITY LLC** **1055 Lenox Park Blvd. NE** **Atlanta, GA 30319** **404-236-7895** ***Complainant*** **v.** **IOWA WIRELESS SERVICES, LLC** **4135 NW Urbandale Drive** **Urbandale, Iowa 50322** ***Defendant.***	**Proceeding 15-259** **File No. EB-15-MD-007**

iWIRELESS APPLICATION FOR REVIEW OF INTERIM RATE ORDER

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Confidential Information Redacted

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iWIRELESS APPLICATION FOR REVIEW OF INTERIM RATE ORDER

Pursuant to 47 C.F.R. § 1.115, Iowa Wireless Services, LLC ("iWireless"), respectfully submits this Application for Review[1] of the *Staff Ruling* issued by the Enforcement Bureau (the "Bureau") of the Federal Communications Commission (the "Commission" or "FCC") on December 18, 2015, in the above-captioned proceeding.[2]

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[1] Pursuant to 47 C.F.R. § 1.4(e)(1) and 47 C.F.R. §1.4(j), deadlines that fall on weekends or holidays are pushed to the next business day. Therefore, due to the initial Sunday filing deadline of January 17, 2016 as well as the Monday, January 18, 2016 Federal Holiday, the revised deadline for this Application for Review is Tuesday, January 19, 2016.

[2] *See* Letter from Christopher Killion, Chief, Market Disputes Resolution Division, Enforcement Bureau, FCC, to Carl W. Northrop, Counsel to iWireless, Telecommunications Law Professionals PLLC, and James F. Bendernagel, Jr., Counsel to AT&T, Sidley Austin LLP, Proceeding No. 15-259, File No. EB-15-MD-007 (Dec. 18, 2015) ("*Staff Ruling*").

I. STATEMENT OF PERTINENT FACTS

iWireless and AT&T Mobility LLC ("AT&T") were parties to a bilateral roaming agreement dated January 1, 2006 (the "Terminated Agreement").[3] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** By letter dated September 21, 2015, iWireless notified AT&T that it was terminating the Terminated Agreement.[5] The termination was effective on December 20, 2015.[6] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

To date, iWireless and AT&T have been unable to reach an understanding regarding the terms and conditions of their going forward roaming arrangement. **[BEGIN CONFIDENTIAL]** [redacted] **[END**

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[3] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** (the "Terminated Agreement").

[4] Terminated Agreement, Section 2.

[5] Letter from C. Shumaker to G. Meadors and K. Dresch dated September 21, 2015 Re: Intercarrier Multi-Standard Roaming Agreement By and Between Cingular Wireless LLC and Iowa Wireless Services. Dated January 1, 2006.

[6] **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

[7] *See* Letter from Lisa Saks to Carl W. Northrop and James F. Bendernagel, Jr. dated July 9, 2015 Re: Mediation – AT&T Mobility LLC (AT&T) Roaming Dispute with Iowa Wireless Services LLC ("iWireless").

CONFIDENTIAL] the parties are now involved in a formal complaint proceeding (the "Complaint Proceeding") initiated by AT&T.[8]

In accordance with the explicit procedure set forth in the *Data Roaming Order*[9] and the *Roaming Declaratory Ruling*,[10] iWireless proffered data roaming rates pursuant to which it agreed to provide uninterrupted service to AT&T pending the outcome of the Complaint Proceeding subject to possible true up once the final agreement is in place.[11] The *Staff Ruling* refused to honor the rates proffered by iWireless, and instead ordered iWireless to provide service to AT&T at the rates set in 2008 in the Terminated Agreement.

iWireless seeks the review of the full Commission of this Staff action. As is set forth in detail below, the Staff does not have the delegated authority to disregard the explicit procedure set forth in the *Data Roaming Order* and the *Roaming Declaratory Ruling* and to engage in the setting of rates for both voice and data roaming services, particularly at this stage of the Complaint proceeding.

II. THE LEGAL STANDARD

Section 1.115(a) of the FCC Rules allows any person aggrieved by an action taken pursuant to delegated authority to file an application requesting review by the full Commission.[12]

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[8] *See AT&T Mobility LLC v. Iowa Wireless Services LLC*, Proceeding No. 15-259 (File No. EB-15-MD-007).

[9] *See* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Radio Service Data (WT Docket No. 05-265), *Second Report and Order,* 26 FCC Rcd 5451 at para. 87 (2011) (the *"Data Roaming Order").*

[10] *See* Reexamination of Roaming Obligations of Commercial Mobile Radio Service and Other Providers of Mobile Data Services (WT Docket No. 05-265), *Declaratory Ruling*, 29 FCC Rcd 15483 (WTB 2014) (the "*Roaming Declaratory Ruling*").

[11] iWireless also proffered a voice roaming rate, even though it had no obligation to do so under any voice roaming order, the *Data Roaming Order* or the *Roaming Declaratory Ruling.*

[12] 47 C.F.R Section 1.115(a). Since iWireless is a party to the proceeding in which the *Staff Ruling* was issued iWireless need make no special showing demonstrating its standing as an aggrieved party to seek review. *Id.*

Among the specified grounds which warrant Commission action on review are that (a) the action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent or established Commission policy; and (b) the action constitutes prejudicial procedural error. Both of these factors justify review, and reversal here. First, substantively, the Bureau's actions here are in direct conflict with case precedent without explanation or justification. The Bureau ignored the explicit Commission-established mechanism for interim service during the pendency of a roaming dispute. Second, procedurally, it is highly prejudicial for the Staff to impose upon iWireless a superseded rate from an expired contract in the absence of a complete record, especially in light of the recent ruling in the *Roaming Declaratory Ruling* that the rate in a previous agreement has no presumption of reasonableness with respect to future negotiations or agreements.[13]

III. THE STAFF VIOLATED THE ESTABLISHED COMMISSION POLICY GOVERNING INTERIM SERVICE FOR DATA ROAMING

After an extensive notice and comment rulemaking proceeding, the full Commission adopted a specific procedure in the *Data Roaming Order* to enable data roaming service to be provided on an interim basis during a roaming complaint proceeding.[14] Paragraph 80 of the *Data Roaming Order* expressly provides that, if parties are unable to reach a voluntary agreement and end up in a dispute before the agency,

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[13] *See* iWireless Opposition to Motion for Interim Relief filed November 20, 2015 ("iWireless Opposition") at 19.

[14] The Commission did not delegate to the Bureau any authority to set rates for voice roaming service on an interim basis. Thus, with respect to voice roaming, the Bureau has imposed a rate on iWireless without any precedent, authority or Commission guidance. Indeed, the Bureau in its *Staff Ruling* states that iWireless must continue to provide rates to AT&T "in accordance with the *Data Roaming Order,*" which is a nonsensical reference with regard to the voice rate. *Staff Ruling* at 1. The Bureau is essentially acknowledging that it has no authority to adopt interim voice roaming rates. The fact is, the Commission has not established interim procedures for voice roaming.

> the Commission staff may, if requested and in appropriate circumstances, order the host provider to provide data roaming on its proffered terms. . .[15]

This procedure was expressly reaffirmed by the Wireless Telecommunications Bureau in the very recent *Roaming Declaratory Ruling*:

> To the extent a requesting provider requires data roaming services but believes a would-be host provider's proffered terms and conditions are commercially unreasonable, we remind such providers that the Commission staff may, in appropriate circumstances, order a would-be host provider to provide data roaming services on its proffered terms during the pendency of a dispute. Such service would be subject to possible true-up once a roaming agreement is in place.[16]

Notably, the reiteration in the *Roaming Declaratory Ruling* of the interim service process immediately followed the discussion of situations in which parties had a prior agreement but could not agree upon a going forward rate – the exact situation at issue here.[17]

Here, iWireless asked the Commission staff to follow the established interim service procedure and, in doing so, expressly confirmed that it would not cut off service to AT&T provided that the proffered rate was paid.[18] Nonetheless, the Staff disregarded the Commission-established process and ordered iWireless to provide service at a rate other than the rate iWireless proffered. Incredibly, the *Staff Ruling* purports to be taken "in accordance with the *Data Roaming Order*"[19] when, in truth, it violates the fundamental premise of the data roaming rule which "allows host providers to control the terms and conditions of proffered data roaming

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[15] *Data Roaming Order* at para. 80 (emphasis added).
[16] *Roaming Declaratory Ruling* at para. 27 (emphasis added).
[17] *Id.*
[18] *See* iWireless Opposition at Section II.A and iWireless Surreply to AT&T Reply in Support of Motion for Interim Relief filed December 7, 2015 at p.6 ("iWireless Surreply") in Proceeding 15-259.
[19] *Staff Ruling*, p. 1.

arrangements."[20] With specific reference to the interim service arrangement at issue here, the *Staff Ruling* blatantly disregards the Commission procedure. Under these circumstances, Commission review plainly is warranted. The Staff has gone light years beyond its delegated authority under Section 0.311(a) of the rules. Worse than taking upon itself to rule upon a matter that cannot be resolved under existing precedent, the Staff has chosen to overrule the clear Commission precedent and engage in unlawful *ad hoc* ratemaking.

IV. PRIOR CONTRACT RATES ARE NOT PRESUMPTIVELY REASONABLE

It is undisputed that the Terminated Agreement ceased to exist as of December 20, 2015. This means that the Staff has ordered iWireless to continue to provide service under the terms of a contract that no longer exists, and that no longer governs the rights and obligations of the parties. This Staff action is indefensible, particularly in light of the *Roaming Declaratory Ruling* which holds that a prior rate structure "might have been commercially reasonable at that time but may no longer reflect current marketplace conditions, which is why the Commission limited this presumption [of reasonableness] to existing agreements and not to future negotiations."[21]

Notably, in this instance iWireless made extensive showings to the Staff of the material changes in circumstances that rendered the rates negotiated in 2008 no longer commercially reasonable using the applicable "totality of the circumstances" test. [22] These iWireless showings were not even acknowledged by the Staff, let alone addressed. The Staff acted unlawfully and committed prejudicial procedural error when it saddled iWireless with a non-current rate from the Terminated Agreement against its will.

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[20] *Data Roaming Order,* para. 33.
[21] *Roaming Declaratory Ruling* at para. 26.
[22] *See* iWireless Opposition at pps. 5-14.

V. THE COMMISSION'S INTERIM PROCEDURE SERVES THE PUBLIC INTEREST

The procedure the Commission established to allow roaming service to be provided on an interim basis pending the outcome of a roaming dispute reflects a well-reasoned balancing of interests. Allowing the host carrier to proffer the interim rate is consistent with the core structure of the data roaming rule, that enables the host carrier to engage in individualized decisionmaking and to control the terms and conditions on which service is offered, and in keeping with the staunch refusal of the Commission to engage in ratemaking. For example, the *Data Roaming Order* makes clear that the data roaming rule was specifically crafted to "give host providers appropriate discretion in the structure and level of such rates that they offer..."[23] The rule "allows host providers to control the terms and conditions of proffered data roaming arrangements, within a general requirement of reasonableness."[24] The procedure adopted by the Commission that defers on an interim basis to the rate proffered by the host carrier pending the outcome of the proceeding is completely in keeping with the data roaming regulatory scheme, and the Staff cannot casually abandon the procedure as it has done here.

The Staff has offered no explanation or justification for abandoning the interim service procedure that was so carefully crafted by the Commission. There can be no doubt that AT&T – which recently reported wireless revenues of *over $18 billion dollars*[25] – is in a financial position to pay the proffered interim rate and thus would be able to guarantee uninterrupted service to its customers even in the unlikely event of a possible true-up. So, not only was the Staff without

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[23] *Data Roaming Order* at para. 21 *citing 2010 Roaming Order* at 4190, para. 18 and 4197, para. 31.
[24] *Id.* at para. 33.
[25] *See* Phil Goldstein, AT&T Leans on Prepaid, Connected Devices for Subscriber Growth in Q3, Fierce Wireless, October 23, 2015.

authority to ignore the Commission's ruling, but there was absolutely no reason or justification for doing so.

VI. THE *STAFF RULING* CONSTITUTES UNLAWFUL RATE SETTING

The core holding in the *Data Roaming Order* was that providers of broadband roaming services are not treated as common carriers subject to Title II of the Communications Act.[26] And, even though the Commission reclassified mobile broadband Internet access service ("MBIAS") as a telecommunications service and a commercial mobile radio service ("CMRS") in the *Net Neutrality Order,*[27] the Commission decided that the data roaming rule, rather than the automatic voice roaming rule, *or Title II,* would continue to govern data roaming services pending a proceeding to revisit the data roaming obligations of MBIAS carriers.[28] Given this fact, the Commission in general and the Staff in particular have no authority at this early stage of the Complaint proceeding to engage in rate setting by imposing a rate to which iWireless has not agreed.

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[26] *See Data Roaming Order,* paras. 67, 70; *see also Cellco Partnership v. FCC,* 700 F.3d 534, 549 (D.C. Cir. 2012).

[27] *See* Preserving and Protecting the Open Internet, *Report and Order on Remand, Declaratory Ruling and Order,* 30 FCC Rcd 5601, 5778-88 (2015) (the "*Net Neutrality Order*") *appeal pending United States Telecom Association v. FCC* (case no 15-1063 (D.C. Cir.)

[28] *Id.* at para. 526. (emphasis added). The Commission decided not to subject data roaming carriers to the strictures of the voice roaming rule "consistent with [the Commission's] intent to proceed incrementally with regard to regulatory changes for MBIAS" and absent an adequate record to do otherwise. *Net Neutrality Order,* para. 526. In so doing, the Commission ruled that "[t]he data roaming rule, rather than the automatic roaming rule ***or Title II***, will govern conduct prior to the completion of a rulemaking proceeding, the results of which will only be applied on a going forward basis. *Id.* In effect, the Commission has forborn from applying Title II to MBIAS at this time. Notably, even if the iWireless data roaming services were deemed to be subject to Sections 201 and 202, they would not be subject to the "ratemaking regulations adopted under sections 201 and 202" from which the Commission has expressly forborne. *Id.* at para. 456. As discussed herein, the Staff action with respect to the interim rate is a form of prohibited *ex ante* rate regulation.

Clearly the Commission has greater authority under Title II than under Title III to set and regulate rates. Section 201 of the Act[29] requires that all charges, practices, classifications and regulations in connection with common carrier communication services be just and reasonable and empowers the Commission to prescribe such rules and regulations as are necessary to carry out this requirement. Section 202 of the Act prohibits unreasonable discrimination in charges and undue preferences or discrimination in charges.[30] Section 204 allows the Commission to require common carriers to file a schedule of charges and Section 204 empowers the Commission to suspend any specified charge pending a hearing.[31] Section 205 empowers the Commission, upon a complaint, *after full opportunity for hearing,* to determine and prescribe just and reasonable changes.[32] There are no comparable provisions in Title III with respect to the regulations of the rates and charges of Title II carriers. Rate regulation of non-common carrier services simply is not contemplated by the Act.

Significantly, despite the clear statutory authority of the Commission to regulate the rates and charges of common carriers, the agency long ago implemented a policy of detariffing and forbearance with respect to non-dominant carriers in general and CMRS carriers in particular.[33] In the 1993 amendments to the Act, Congress granted the Commission forbearance authority to

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[29] 47 U.S.C. Section 201(b).
[30] *Id.* at Section 202(a).
[31] *Id.* at Sections 203(a) and 204(a).
[32] *Id.* at Section 205(a).
[33] For example, the Commission initiated efforts to prohibit filing of tariffs by non-dominant interexchange carriers in the early 1980's and revived these efforts in 1996 after receiving statutory forbearance authority. *See MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985); *MCI Telecommunications Corp. v. American Tel. & Tel Co.*, 512 U.S. 218 (1994). *See also* Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act, CC Docket No. 96-61, *Second Report and Order*, 11 FCC Rcd 20730, 20733 (1996), *aff'd sub nom., MCI WorldCom v. FCC*, 209 F.3d 760 (D.C. Cir. 2000) (holding that the 1996 Act granted the FCC authority to order mandatory detariffing).

specify, by regulation, provisions in Title II of the Act as inapplicable to CMRS and CMRS providers.[34] Pursuant to this authority, the Commission exempted CMRS providers from the requirements of Section 203, which requires communications common carriers to file tariffs for interstate services with the Commission and prohibits carriers from charging, demanding, collecting, or receiving "a greater or less or different compensation"[35] than that specified in their filed tariffs.[36] CMRS carriers are not only exempt from filing tariffs, they are also prohibited from filing tariffs with the Commission.[37] As described by the Commission in an order in 2000:

> We do not set CMRS rates or require that carriers only charge rates as filed. Rather than file tariffs to establish the legally effective rates (and other terms and conditions) for their offering, CMRS carriers enter into service contracts with their customers. We rely on the competitive marketplace to ensure that CMRS carriers do not charge rates that are unjust or unreasonable, or engage in unjust or unreasonable discrimination.[38]

Having adopted a strict hands-off policy with respect to wireless rate setting under Title II, the Commission understandably has avoided rate setting for non-common carrier data services that have generally been accorded the "light regulatory touch" applied to information services and the Internet.[39] This no doubt explains the consistent refusal of the Commission to set caps or benchmarks for roaming rates – let alone to dictate specific rates – despite repeated requests to do so. For example, in the *Roaming Declaratory Ruling*, the Commission rejected using rate

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[34] 47 U.S.C. § 332(c)(1)(A).
[35] 47 U.S.C. § 203.
[36] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-25, *Second Report and Order,* 9 FCC Rcd 1411, 1418, 1478 (paras. 14, 174) (1994). *See also* Section 20.15(a) of the Commission's Rules, 47 C.F.R. § 20.15(a).
[37] *See* Section 20.15(c) of the Commission's Rules, 47 C.F.R. § 20.15(c).
[38] *See Wireless Consumers Alliance, Inc.*, 15 FCC Rcd 17021 at para. 21 (August 14, 2000).
[39] *See, e.g.,* 47 U.S.C. Section 230(b) (The policy of the U.S. is to "to preserve the vibrant and competitive free market that presently exists for the Internet... unfettered by Federal or State regulation").

"benchmarks" for assessing commercial reasonableness. Heeding concerns expressed by AT&T and others that linking roaming rates to other rates or benchmarks would create a *de facto* price cap and reduce negotiating freedom,[40] the Commission declined to set a benchmark or a cap on prices."[41] The *Staff Ruling* – which, without the benefit of a hearing record, dictates a rate different than the one proffered by the host carrier iWireless – flies in the face of the praiseworthy restraint the Commission has exercised with respect to roaming rate regulation.

Significantly, in the *Data Roaming Order* the Commission expressly rejected the "more specific prescriptive regulation of rates requested by some commenters."[42] As emphasized in the statement of Chairman Genachowski that accompanied the *Data Roaming Order,* "we have avoided, as we did unanimously in the voice roaming context, regulating rates for data roaming agreements, instead leaving it to the parties to set their terms."[43] The aversion of the Commission to regulating the rates charged by wireless carriers was resoundingly confirmed in the *Net Neutrality Order* in which, despite reclassifying MBIAS as a Title II service, the Commission expressly "forbears from all ratemaking regulations adopted under sections 201 and 202."[44]

Here, the decision of the Staff to disregard the rate proffered by iWireless and to pick a rate itself is precisely the type of *ex ante* rate regulation that the Commission has disavowed. The fact that the chosen rate is not the rate that was in effect when the prior contract expired belies any claim that the Commission is maintaining the status quo.[45] And, even if the Staff was perpetuating a rate from a prior contract, the *Roaming Declaratory Ruling* makes clear that prior

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[40] *Id.*at para. 7.
[41] *Id.* at para.18. The *Roaming Declaratory Ruling* also gave its assurance that its approach "will continue to allow host providers substantial room for individualized bargaining." *Id.* at para. 22.
[42] *Id.* at para. 21.
[43] *Id.* at p. 69.
[44] *Net Neutrality Order,* para. 456.
[45] See discussion *infra* at Section VII.

rates are not presumptively reasonable. The inescapable conclusion is that the Staff picked and imposed on a going forward basis a rate that it liked. This is prescriptive rate regulation and is unlawful. The camel's nose is under the tent on wireless rate regulation if the *Staff Ruling* is allowed to stand.

VII. THE *STAFF RULING* DOES NOT MAINTAIN THE STATUS QUO

The Staff's unlawful rate regulation is particularly apparent when the fictitious claim that the ruling "will essentially preserve the *status quo*" is debunked. As the Staff knows full well, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Thus, the claim in the *Staff Ruling* that iWireless is being ordered "to continue to provide roaming" at current rates while this proceeding is pending is misleading at best. The truth is, the Staff has picked an arbitrary rate, without the benefit of a full record, without regard to the *status quo*.[46]

VIII. THE STAFF ESCHEWED A LAWFUL ALTERNATIVE

For the reasons set forth above, iWireless submits that the Staff should have set the interim rate in accordance with the proffer made by iWireless to AT&T on November 20, 2015 (the "Interim Rate Proffer").[47] There is, however, an alternative approach that the Staff could have taken consistent with both the *Data Roaming Order* and the AT&T Motion for Interim

[46] iWireless does not concede that the Staff has the authority to abandon the Commission protocol of allowing the host carrier to proffer the interim rate. The point is that the Staff cannot successfully defend its action as one which maintains the *status quo*. Moreover, even if the staff-imposed rate was indeed the rate in effect when the contract terminated, the Staff would have no authority to impose that rate over the objection of iWireless because the Commission has ruled that the rate proffered by the host carrier controls and precedent establishes that a rate from a prior contract is not presumptively reasonable.

[47] *See* iWireless Opposition at Exhibit 4.

Relief (the "Motion").[48] On December 4, 2015, iWireless submitted a Best and Final Offer ("BAFO") pursuant to the request of the Staff. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** The Staff would have been acting within the bounds of its authority if it ordered iWireless to provide service to AT&T on the terms set forth in the BAFO. The *Data Roaming Order* specifically provides that "if the Commission Staff chooses to require the submission of [best and] final offers as discussed above, in appropriate circumstances the Commission staff could order the host provider to provide data roaming service on an interim basis during the pendency of the dispute, subject to possible true up."[49]

Significantly, directing iWireless to provide service to AT&T in accordance with the iWireless BAFO would have been entirely consistent with the relief that AT&T sought when it filed its Motion. In the Conclusion to the Motion, AT&T asked the Staff, in the alternative, to require iWireless to "make a best and final offer and provide voice and data roaming service in accordance with that offer."[50] This alternative request for relief even found its way into the proposed order that accompanied the AT&T Motion.[51] Since this prayer for relief was consistent with the Commission-established procedure for interim service, the Staff erred in failing to choose this alternative.

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[48] *See Motion for Interim Relief* filed October 20, 2015.
[49] *Data Roaming Order* at para. 80. Significantly, the only authority delegated to the Staff with regard to a "possible true up" arises when interim service is provided pursuant to terms proffered by the host carrier. *See Data Roaming Order* at para. 80; *see also Roaming Declaratory Ruling* at para. 27. The Staff has failed to cite any authority, because none exists, in support of the proposition that it has the authority to order a true up when it has taken the extraordinary step of setting a rate on its own at the request of the requesting carrier.
[50] Motion, p. 11.
[51] Motion, Attachment 1 (Proposed Order) at para. 3.

IX. CONCLUSION

It is well-settled that the Commission will grant review when Commission staff takes an action on delegated authority that is contrary to Commission precedent. For example, in 2004, the Commission granted an Application for Review of a decision by the Accounting and Audits Division of the Common Carrier Bureau made on delegated authority. In that situation, a carrier request for a waiver to be treated as an ILEC serving a previously unserved area for purposes of receiving high-cost USF was granted. The Commission found, *inter alia*, that the Bureau's decision was contrary to recent Commission precedent governing situations where a company seeks to create a new study area from within one or more existing study areas (as was the case at hand). The Commission reversed the Bureau's decision and directed the Bureau to proceed in accordance with the governing precedent. [52]

In accordance with this precedent, and for all of the reasons on set forth above, this Application for Review should be granted and the Commission should rule that service as of December 21, 2015 shall be provided at the rate proffered by iWireless.

[*Signature Page Follows*]

[52] *In the Matter of GTE Hawaiian Telephone Company, Inc.*; Application for Review of a Decision by the Common Carrier Bureau; Sandwich Isles Communications, Inc.; Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification, Memorandum Opinion and Order, 19 FCC Rcd 22268 (2004).

Respectfully Submitted,

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January 19, 2016

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2016, I caused the foregoing Application for Review to be delivered to:

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